

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**CRIMINAL APPEAL No.603 of 1997****For Approval and Signature:****HONOURABLE MR.JUSTICE J.M.PANCHAL****AND****HONOURABLE MR.JUSTICE H.B.ANTANI**

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- 1 Whether Reporters of Local Papers may be allowed to see the judgment ?
 - 2 To be referred to the Reporter or not ?
 - 3 Whether their Lordships wish to see the fair copy of the judgment ?
 - 4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
 - 5 Whether it is to be circulated to the civil judge ?
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NIMESHKUMAR AMRSINH CHAVDA - Appellant**Versus****STATE OF GUJARAT - Respondent****Appearance :**

MR KJ SHETHNA for Appellant.

MR ND GOHIL, APP for Respondent.

CORAM : HONOURABLE MR.JUSTICE J.M.PANCHAL**and****HONOURABLE MR.JUSTICE H.B.ANTANI****Date : 14-17/10/2005****ORAL JUDGMENT****(Per : HONOURABLE MR.JUSTICE J.M.PANCHAL)**

Instant appeal filed under Section 374(2) of the Code of Criminal Procedure, 1973 ("the Code" for short) is directed against judgment dated April 30, 1997 rendered by

the learned Additional Sessions Judge, Nadiad, in Sessions Case No.129 of 1996 by which the appellant is convicted under Section 302 of the Indian Penal Code ("IPC" for short) for causing murder of his wife Ms.Bhavnaben, and sentenced to suffer R.I. for life and fine of Rs.5,000=00, in default R.I. for two years.

2. The facts emerging from the record of the case are as under:

The appellant was residing in Bhagyalaxmi Society, Petlad, with his father Amarsinh and others. Deceased Ms.Bhavnaben belonged to Utarsanda. The marriage of the appellant took place with the deceased on February 15, 1996 at Utarsanda. After marriage, the deceased was brought to her matrimonial home at Petlad and was accompanied by her cousin Gita Punambhai Parmar whose father was residing at Petlad. It may be stated that because of marriage, several relatives had collected in the house of the appellant and, therefore, an arrangement was made by the father of the appellant for separate stay of the appellant and the deceased in Bungalow No.51 of Bhagyalaxmi Society, which was quite adjoining to the house of the father of the appellant. On February 16,

1996, a marriage reception was arranged, which was attended by the relatives and the friends of the appellant as well as the deceased. The incident in question took place on October 18, 1996 in Bungalow No.51 of Bhagyalaxmi Society. On the day of incident at about 3.45 PM, Gita, who was in adjoining room occupied by the appellant and the deceased, heard shouts of the deceased. On hearing shouts, attention of Gitaben was drawn towards the room wherein the appellant was with the deceased. Through grill, Gitaben could see that the appellant was assaulting the deceased by means of wedge and/or chip of wood. Thereupon, Gitaben raised shouts and, therefore, people collected near the room of the appellant. The room which was closed from inside was got opened and people collected there found that Ms.Bhavnnaben was bleeding profusely due to head injuries. Gitaben could also see that the appellant was present in the room. As Ms.Bhavnnaben had lost consciousness, she was removed to Sayaji Hospital, Petlad, for treatment by Ramsinh Fulsinh, who is maternal uncle of the appellant. The Medical Officer on duty advised Ramsinh to remove injured Ms.Bhavnnaben to Karamsad Hospital and, informed officer in charge of Petlad Police Station telephonically that Bhavnnaben, who was injured by her husband, was brought to

the hospital for further treatment. After making arrangement for ambulance van, Ramsinh approached the Medical Officer on duty at Sayaji Hospital, Petlad, to remove injured Bhavnaben to the hospital at Karamsad. The Medical Officer informed Ramsinh that it was useless to remove injured Bhavnaben to Karamsad Hospital as she had expired and asked Ramsinh to inform the parents of the deceased. A wireless message was conveyed by the Police Officer in charge of Petlad Town Police Station about the contents of Entry No.11 posted in Station Diary pursuant to telephonic message sent by Medical Officer of Petlad Civil Hospital, to Mr.H.C.Pathak, who was then Police Inspector of Petlad Police Station. On receipt of wireless message, P.I. Mr.Pathak first went to the Police Station and after verifying the contents of the entry, went to Sayaji Hospital, Petlad. On inquiry, he found that the deceased was brought to the hospital by Ramsinh, i.e. maternal uncle of the appellant, but no one was present at the hospital. He, therefore, went to the place of incident and posted guards to protect place of incident. He in the company of Ramsinh went back to the hospital and after ascertaining the facts, recorded First Information Report as narrated by Ramsinh. On the basis of First Information Report of Ramsinh, offence of murder was

registered against the appellant. Mr.Pathak held inquest on the dead body of the deceased and forwarded a *yadi* to Medical Officer of Sayaji Hospital, Petlad, to get performed autopsy on the dead body of the deceased by a panel of doctors. While bringing the deceased to the hospital, the clothes put on by complainant Ramsinh were bloodstained and, therefore, his bloodstained clothes were taken into custody under a panchnama. A photographer, i.e. Shanabhai Valjibhai, was also summoned who had taken photographs of place of incident and the deceased. The Investigating Officer drew panchnama of place of incident and recorded statements of those persons, who were found to be conversant with the facts of the case. On February 20, 1996, the Investigating Officer also recorded statements of parents of the deceased. On February 20, 1996, the appellant surrendered before the Police at about 14-30 hours and, therefore, panchnama of his person was prepared. During the course of interrogation, the appellant made disclosure statement pursuant to which bloodstained clothes put on by him were discovered in presence of panch-witnesses. Again, on February 22, 1996, the appellant made disclosure statement pursuant to which, knife used in commission of crime was recovered. It may be stated that it was noticed that the appellant had

sustained injuries and, therefore, he was referred to Medical Officer for treatment on February 22, 1996. The incriminating articles seized during the course of investigation were sent to Forensic Science Laboratory (F.S.L.) for analysis. On completion of investigation, the appellant was chargesheeted in the Court of learned Judicial Magistrate First Class, Petlad, for commission of offence punishable under Section 302 IPC.

3. As the offence punishable under Section 302 IPC is exclusively triable by a Court of Sessions, the case was committed to the Sessions Court, Nadiad, for trial where it was numbered as Sessions Case No.129 of 1996.

4. The learned Additional Sessions Judge, Nadiad, to whom the case was made over for trial, framed necessary charge against the appellant at Exh.6. It was read over and explained to him. He pleaded not guilty to the same and claimed to be tried. The prosecution, therefore, examined; (1) maternal uncle of the appellant, i.e. Ramsinh Fulsinh as P.W.-1 at Exh.9; (2) Dr.Indrakant Narshidas Rajvadiya as P.W.-2 at Exh.10; (3) panch Hasanali Pirsabmiya Saiyed as P.W.-3 at Exh.15; (4) panch Manaf Mohmed Allarakhan Vora as P.W.-4 at Exh.16; (5)

panch Natubhai Rajibhai Parmar as P.W.-5 at Exh.17; (6) panch Ashikbhai Underbhai Vora as P.W.-6 at Exh.18; (7) panch Kanubhai Rajibhai Parmar as P.W.-7 at Exh.19; (8) panch Bansibhai Dahyabhai as P.W.-7A at Exh.19A; (9) panch Ishwarbhai Bhikhabhai Parmar as P.W.-8 at Exh.20; (10) father of the deceased, i.e. Chimanbhai Ambalal Parmar as P.W.-9 at Exh.23; (11) cousin of the deceased, i.e. Gitaben Punambhai Parmar as P.W.-10 at Ex.24; (12) father of Gitaben, i.e. Punambhai Dalpatbhai Parmar as P.W.-11 at Ex.25; (13) Investigating Officer Himanshu Chandravadan Pathak as P.W.-12 at Exh.27; and, (14) Photographer Shanabhai Vaghjibhai as P.W.-13 at Exh.36, to prove its case against the appellant. The prosecution also produced documentary evidence such as postmortem notes of deceased Ms.Bhavnnaben at Exh.11; intimation by PI Mr.Pathak to Medical Officer to state nature of injuries of the appellant and whether he was potent at Exh.13; contract entered into between Chimanbhai, i.e. father of the deceased and Punambhai, i.e. father of girl Gitaben, on one hand and Amarsinh Fatesinh Chavda, i.e. father of the appellant, Bhagubhai Jashabhai Chauhan, Solanki Ramsinh Fulsinh, i.e. complainant, on the other hand, evidencing articles which were handed over to Chimanbhai, i.e. father of the deceased at Exh.26; complaint lodged by

Ramsinh at Exh.28; inquest report of the deceased at Exh.29; panchnama indicating seizure of clothes of the deceased at Exh.30; panchnama of place of lace of incident at Exh.31; arrest panchnama of the appellant at Exh.33; panchnama of discovery of bloodstained clothes put on by the appellant pursuant to disclosure statement made by him at Exh.34; panchnama of discovery of knife used in commission of offence pursuant to disclosure statement made by the appellant at Exh.36; report of F.S.L. at Exh.82, etc. in support of its case against the appellant.

5. After recording of evidence of prosecution witnesses was over, the learned Judge explained to the appellant the circumstances appearing against him in the evidence of prosecution witnesses and recorded his further statement as required by Section 313 of the Code. In his further statement, the case of the appellant was that of total denial. Written arguments were submitted by the appellant at Exh.76. However, no defence evidence was adduced by him.

6. On appreciation of evidence adduced by the prosecution, the learned Judge held that it was proved that deceased Ms.Bhav nab en died a homicidal death. The

learned Judge noticed that it was admitted by complainant Ramsinh that he had signed the complaint, but in order to save the appellant, who was his nephew, witness Ramsinh had suppressed the truth and turned hostile to the prosecution. The learned Judge thereafter referred to testimony of Chimanbhai, i.e. father of the deceased, and held that his evidence indicated that there were disputes between the appellant and the deceased regarding necklace to be given to the deceased by her in-laws, which provided a motive for commission of crime. After perusing testimony of witness Gitaben, the learned Judge held that Gitaben was not an eye-witness. The learned Judge noticed that non-examination of so-called four eye-witnesses had no adverse effect on the prosecution case as two of them were closely related to the appellant whereas two others were residing in the society in which the father of the appellant was residing. The learned Judge further took into consideration the report of the F.S.L., which indicated that group of blood of the deceased was 'O', which was found on the clothes and the knife discovered pursuant to disclosure statements made by the appellant while in custody and held that find of the same group of blood as that of the deceased on the clothes of the appellant and the knife, indicated that the appellant was

in close proximity of the deceased when the deceased was fatally wounded. The learned Judge held that contract at Exh.26 was proved through the testimony of witness Punambhai wherein factum of murder of the deceased by the appellant was referred to, which should be treated as admission under Section 17 of the Indian Evidence Act and was a circumstance against the appellant. The learned Judge noticed strange conduct of the appellant in absconding from the place of the incident after death of the deceased and held that, that was also an incriminating circumstance against the appellant. On reference to medical evidence, the learned Judge found that the appellant was injured and injuries sustained by him were possible while causing injuries by knife and/or wedge/chip of wood to the deceased, which also established complicity of the appellant in commission of crime. After holding that it was proved by the prosecution that the incident had taken in Bungalow No.51 of Bhagyalaxmi Society, it was noticed by the learned Judge that no other person had assaulted the deceased and, as the appellant was in the company of deceased, he owed an explanation to be offered to the Court as to in which circumstances, the deceased died. The learned Judge further noticed that telephone verdhi referred to by Investigating Officer

Mr.Pathak was not the 'First Information Report' in the case, but the complaint lodged by Ramsinh was "First Information Report" in the case. The learned Judge referred to postmortem notes in detail and held that injuries Nos.1, 4 & 5 were possible by knife whereas other injuries were possible by a wedge/chip of wood, which supports the prosecution case. After holding that the deceased was last seen alive in the company of the appellant, the learned Judge held that the chain of circumstances established was so complete as to exclude possibility of innocence of the appellant and was consistent only with the guilt of the appellant. In view of abovereferredto conclusions, the learned Judge has convicted the appellant under Section 302 IPC and imposed the sentence referred to earlier by judgment dated April 30, 1997 giving rise to instant appeal.

7. Mr.K.J.Shethna, learned counsel of the appellant, contended that in view of material omissions and/or contradictions appearing in the evidence of witness Gitaben Parmar, the learned Judge of the trial Court was justified in coming to the conclusion that she was not an eye-witness to the incident and, therefore, her evidence should be excluded from the consideration by this Court

while deciding the guilt or otherwise of the appellant. After referring to her evidence, it was argued that it raises a serious doubt about her presence at the time and place of incident and, therefore, the learned Judge of the trial Court was justified in discarding her evidence while considering the case of the prosecution against the appellant. The learned counsel maintained that four eye witnesses have not been examined in the case and after drawing adverse inference, prosecution case should be disbelieved. According to the learned counsel of the appellant, once the evidence of witness Gita is excluded from consideration then the only incriminating circumstances, which the prosecution has attempted to prove, are; (1) last seen together; (2) find of incriminating articles and find of same group of blood as that of the deceased on those incriminating articles; and (3) the appellant was not available for two days, and as those circumstances are not proved satisfactorily, the judgment impugned in the appeal deserves to be reversed. It was argued that witness Gitaben in her testimony has claimed that the appellant and the deceased had gone out of house for a stroll, but has not stated that she had seen them returning and entering the room in which the incident had taken place and, therefore, the first

circumstance that the deceased was last seen alive in the company of the appellant is not proved at all. What was stressed was that find of clothes of the appellant and knife pursuant to disclosure statements made on two different dates, does not appear to be trustworthy and, therefore, the same could not have been relied upon by the learned Judge of the trial Court while fastening criminal liability on the appellant. It was argued that incriminating circumstances namely, find of bloodstained clothes and bloodstained knife pursuant to voluntary disclosure statements made by the appellant, were never explained to the appellant while recording his further statement under Section 313 of the Code nor his explanation was sought regarding those circumstances and, therefore, the same should be excluded from the consideration while considering the evidence against the appellant. It was claimed that the articles discovered pursuant to so-called disclosure statements made by the appellant were never identified by the Investigating Officer before the Court and, therefore, they lose their importance as incriminating evidence connecting the appellant with the crime in question. It was pleaded that non-availability of the appellant for two days can hardly be considered as a circumstance against the appellant more

particularly when the other circumstances are not firmly established and as the chain of evidence adduced against the appellant is not complete nor it is established that the appellant alone had committed murder of the deceased, the appeal should be accepted. It was asserted that the learned Judge of the trial Court has failed to appreciate the evidence on record in its true perspective and, therefore, the appeal should be allowed.

8. Mr.N.D.Gohil, learned Additional Public Prosecutor for the State, contended that the learned Judge of the trial Court was not justified in brushing aside reliable evidence of witness Gitaben because of minor discrepancies appearing in her evidence and that on re-appreciation of her evidence, this Court should believe her testimony for the purpose of deciding guilt of the appellant. It was contended that as such Gita, who was young in age at the time of incident, had no grudge against the appellant and, therefore, the learned Judge of the trial Court was not justified in disbelieving her testimony only because of minor omissions and/or contradictions appearing in her testimony with reference to her police statement. In the alternative, it was argued that the chain of circumstances established by the

prosecution is so complete that it is consistent only with the guilt of the appellant and inconsistent with the innocence of the appellant as a result of which, well founded conviction of the appellant should be upheld by this Court. According to the learned counsel of the State Government, the fact that the deceased died within the three days of her marriage at her matrimonial house is not in dispute whereas the evidence on record clinchingly establishes that the deceased was last seen alive in the company of the appellant as a result of which, the appellant, who is husband of the deceased, owed duty to the Court to explain as to in which circumstances, the deceased expired, and as the appellant has failed to offer plausible explanation, the case of the prosecution against the appellant should be accepted by the Court. The learned counsel of the State Government emphasized that discovery of bloodstained clothes of the appellant and bloodstained knife having the same group of blood as that of the deceased, should not be excluded from the consideration on the ground that those incriminating circumstances were not put to the appellant while recording statement under Section 313 of the Code and prayed that the those circumstances should be put by the appellate Court to the appellant to do complete justice between the parties.

According to the learned Additional Public Prosecutor, the motive for commission of crime stands proved by testimony of witness Chimanbhai Darbar, who was father of the deceased girl and, therefore, the motive taken with other circumstances established by the prosecution unerringly proves that the appellant had murdered his wife, deceased Bhavnaben. According to the learned Additional Public Prosecutor, Exh.26 wherein mention of the fact that the appellant had murdered his wife is made, should also be taken into consideration while considering the other circumstances against the appellant and though it may not be relevant as admission under Section 17 of the Evidence Act, but is a relevant piece of evidence for the purpose of deciding the fact in issue namely, whether the appellant had murdered his wife and, therefore, the same should be taken into consideration by the Court. The learned counsel of the State Government stressed that the conduct of the appellant in making himself scant for two days after the incident is also an incriminating circumstance, which should be taken into consideration by the Court while appreciating the evidence adduced by the prosecution and if read in the light of the other circumstances proved by the prosecution, it establishes guilt of the appellant. The learned counsel of the State

Government maintained that cogent and convincing reasons have been assigned by the learned Judge of the trial Court to convict the appellant under Section 302 IPC and as the learned counsel of the appellant has failed to dislodge those weighty reasons, the appeal, which lacks merits, should be dismissed.

9. This Court has heard Mr.K.J.Shethna, learned counsel of the appellant, and Mr.N.D.Gohil, learned Additional Public Prosecutor for the State, at length and in great detail. This Court has also undertaken a complete and comprehensive appreciation of all vital features of the case and the entire evidence on record with reference to broad and reasonable probabilities of the case.

10. The fact that deceased Ms.Bhavnaaben died a homicidal death is not disputed by the learned counsel of the appellant before this Court. Witness Gitaben has stated in her testimony before the Court that the deceased was assaulted by a wedge/chip of wood. The injuries sustained by the deceased are mentioned in detail in the inquest report produced by the prosecution at Exh.29. Dr.Indrakant Narsinhdas Rajvadiya, examined at Exh.10, has stated in his evidence that on February 19, 1996, he was discharging duties as Medical Officer of S.S.Hospital,

Petlad, and that injured Bhavnaben was brought before him for treatment. The witness has further stated that during the course of treatment, the deceased succumbed to her injuries and, therefore, on telephone he had informed Town Police Station. The witness has mentioned that on February 19, 1996, he had performed autopsy on the dead body of the deceased. According to this witness, postmortem was commenced at 9.30 AM and was completed at 10.30 AM. The Medical Officer has enumerated in detail external as well as internal injuries, which were noticed by him while performing autopsy on the dead body of the deceased in his substantive evidence before the Court. The Doctor has specifically mentioned that external injuries mentioned in Column No.17 were corresponding to internal injuries mentioned in Column No.19 of the postmortem report. As per the Medical Officer, cause of death of the deceased was '*shock due to head injuries of skull bones*'. The Medical Officer stands completely corroborated by contemporary document on record, namely, postmortem notes prepared by him and produced at Exh.11. In the postmortem notes also, external and internal injuries sustained by the deceased are enumerated. It is nobody's case that the injuries sustained by the deceased, which were noticed by Dr.Rajvadiya while performing autopsy on the dead body of the deceased, were either accidental or self-inflicted.

Under the circumstances, the finding recorded by the learned Judge of the trial Court that the deceased died a homicidal death is found to be eminently just and is hereby upheld.

11. This brings the Court to consider the question whether the prosecution has been successful in proving its case against the appellant. In order to prove its case against the appellant, the prosecution has relied upon ocular version of the incident as given by witness Gitaben as well as circumstantial evidence established from the record of the case against the appellant.

12. Before re-appreciating evidence of witness Gitaben Punambhai Parmar examined in the case, it would be advantageous to refer to criteria for appreciation of oral evidence. While appreciating the evidence of a witness, the approach must be whether the evidence of witness read as a whole appears to have a ring of truth. Once that impression is formed, it is undoubtedly necessary for the Court to scrutinise the evidence more particularly keeping in view the deficiencies, drawbacks and infirmities pointed out in the evidence as a whole and evaluate them to find out whether it is against the general tenor of the evidence given by the witness and whether the earlier

evaluation of the evidence is shaken as to render it unworthy of belief. Minor discrepancies on trivial matters, not touching the core of the case, hyper-technical approach by taking sentence torn out of the context here or there, from the evidence, attaching importance to some technical error committed by the investigating officer not going to the root of the matter, would not ordinarily permit rejection of the evidence as a whole. Unless the reasons are weighty and formidable, it would not be proper to reject the evidence on the ground of variations or infirmities in the matter of trivial details. Minor omissions in the police statements are never considered to be fatal. The statements given by the witnesses before the police are meant to be brief statements and could not take place of evidence in the Court. Small/trivial omissions would not justify a finding by a Court that the witnesses concerned are liars. The prosecution evidence may suffer from inconsistencies here and discrepancies there, but that is a shortcoming, from which no criminal case is free. The main thing to be seen is whether those inconsistencies go to the root of the matter or pertain to insignificant aspects thereof. In the former case, the defence may be justified in seeking advantage of incongruities obtaining in the evidence. In the latter, however, no such benefit may be available to

it. In the deposition of witnesses, there are always normal discrepancies however honest and truthful they may be. These discrepancies are due to normal errors of observation, normal errors of memory due to lapse of time, due to mental disposition, shock and horror at the time of occurrence and the like. It is not unoften that improvements in earlier version are made at the trial in order to give a boost to the prosecution case, albeit foolishly. Therefore, it is the duty of the Court to separate falsehood from truth. In sifting the evidence the Court has to attempt to separate the chaff from the grains in every case. The Court cannot abandon the attempt on the ground that the case is baffling unless the evidence is really so confusing or conflicting that the process cannot reasonably be carried out. In the light of these principles, the evidence of eye-witness examined in this case will have to be appreciated.

12(1) Gitaben in her testimony recorded at Exh.24 has stated that deceased Bhavnaben was daughter of her parental aunt. According to her, after marriage of deceased Bhavnaben, she had accompanied deceased Bhavnaben to her matrimonial home. The witness has mentioned that she had stayed at the house of in-laws of deceased Bhavnaben for about three days. The witness has stated in

her testimony before the Court that the deceased died at the place of her in-laws. What is claimed by this witness is that the appellant had caused injuries on head of deceased Bhavnaben by means of wedge /chip of wood and, therefore, Bhavnaben expired. According to her, at the time of incident, she was in adjoining room, which was occupied by the appellant and the deceased. The witness has stated that the incident took place at about 3.45 PM and deceased Bhavnaben had raised shouts to save her as a result of which, she had gone to the room occupied by the appellant and the deceased, and seen that the appellant was assaulting the deceased with a wedge/chip of wood. The witness has asserted that she herself had raised shouts to save the deceased and several other persons residing nearby had also collected near the room of the appellant. What is mentioned by this witness is that the room occupied by the appellant was closed from inside and an attempt was made to break open grill attached on the door of the room. The witness has further stated that she had seen that the deceased was bleeding due to her head injuries and at that time, the appellant was present in the room. The witness has stated that because of head injuries, the whole body of the deceased was bloodstained. According to this witness, deceased Bhavnaben was not conscious and able to speak. The witness has also stated

that deceased Bhavnaben was removed to hospital where she had expired. During the course of recording of her testimony, she identified the appellant, who was present in the courtroom.

12(2) In her cross-examination, the witness has stated that since the day of marriage of deceased Bhavnaben, she had gone to Petlad with her. The witness has stated that matrimonial home of the deceased consisted of three rooms out of which, front room was used as drawing room whereas middle room was used for storing goods and last room was being used as kitchen. The witness has mentioned that at the time of incident, father-in-law and mother-in-law as well as younger brother of the appellant were residing in the said bungalow. The suggestion made by the defence that the incident had not taken place in any of the three rooms mentioned by her, was accepted by her. However, the suggestion made by the defence that at the time of incident, other relatives of the appellant were present in the house, was denied by her. The suggestion made by the defence that the house adjoining matrimonial house of deceased Bhavnaben was vacant, which was made available to the appellant and the deceased for their stay, was accepted by her. It was also accepted by her that just abutting the house of the appellant, there was road of the

society and that thereafter, there were four to five buildings. During her cross-examination, this witness has mentioned that her police statement was recorded late in the night of February 18, 1996. According to her, on February 18, 1996, the appellant and the deceased were invited by her father for dinner at Noor Talavadi, Petlad, where her father was residing, but the appellant had turned down the invitation on the ground that he was suffering from headache. According to this witness, from the house of the deceased, she had gone to her house for taking meal and after taking meal, she had again returned to the house of the appellant. The witness has mentioned that as father-in-law of deceased Bhavnaben had become seriously ill, she had stayed for a while in the room in which the father-in-law of deceased Bhavnaben was taking rest. The suggestion made by the defence that she had also seen T.V. at that time, was accepted by her. According to her, when she had returned to the house of the appellant after taking meal at her house, she had not seen the deceased and Nimeshbhai as they had gone out for a stroll. The suggestion made by the defence that at about 3.45 PM, several persons had collected near the room of the deceased and were knocking the same, is admitted by her. Further, the suggestion made by the defence that she was scared and, therefore, had not gone to the room occupied

by the deceased to see as to what was happening therein, is denied by her. The suggestion made by the defence that it was not mentioned by her in her police statement that she had not gone to see as to what was happening because she was scared, was denied by her. The suggestion made by the defence that thereafter, she had learnt from talks of the people that Bhavnaben was assaulted on her head and had, therefore, expired was also denied by her. The suggestion made by the defence that she had learnt from the talks of others that the appellant had assaulted the deceased with wedge/chip of wood and caused injuries on the head of the deceased, was also denied by her. The suggestion made by the defence that it was stated by her in her police statement that she had come to know that deceased Bhavnaben was caused injuries on her head by means of blows given with the wedge/chip of wood and, therefore, was bleeding profusely, was denied by her. The suggestion made by the defence that she had learnt later on that deceased Bhavnaben was removed to the hospital, was denied by her. The suggestion made by the defence that she had not stated in her police statement that the deceased was taken to hospital, was denied by her. According to her, deceased Bhavnaben had not informed her that relations between her (Bhavnaben) and the appellant were strained. It was admitted by her that it was not

stated by her in her police statement that at the time of incident, she was occupying the room, which was adjoining the room occupied by deceased Bhavnaben. The suggestion made by the defence that it was not stated by her in her police statement that on hearing the shouts of the deceased, she had gone towards the room of the deceased, was emphatically denied by her. The suggestion made by the defence that it was not stated by her in her police statement that she had seen the appellant causing injuries sustained to the deceased with wedge/chip of wood, was denied by her. The suggestion made by the defence that she had not mentioned in her police statement that the appellant was in room and that the deceased was bleeding profusely, was also denied by her. The suggestion made by the defence that the deceased had expired when her police statement was recorded, was accepted by her. In view of detailed cross-examination, a suggestion was made to the witness that whether her police statement was recorded by the police as narrated by her and in answer thereto, it was stated by her that she was feeling that her statement was not recorded as narrated by her. In cross-examination also, the witness has asserted in paragraph 7 that she had seen the appellant assaulting the deceased. According to her, after deceased Bhavnaben was removed to the hospital, she had returned to her house

situated at Noor Talavadi. The witness has mentioned that she had narrated to her sister-in-law Ramilaben that the deceased was removed to the hospital. The witness has further mentioned that her father had returned home between 6.00 and 6.30 PM and at that time, she had informed him that the deceased was removed to the hospital. The suggestion made by the defence that at that time, her father had informed her that he had been to hospital, was denied by the witness. According to this witness, on information being conveyed by her to her father that the deceased was removed to hospital, her father had gone to hospital from where he had returned home at about 8.30 PM. The witness has further stated that her father had told her that necessary information would have to be conveyed to Chimanbhai, i.e. father of the deceased, as the deceased had received serious injuries on head. This witness has mentioned that thereupon, her brother Gopal had left the home to inform Chimanbhai about the incident.

12(3) This is all what transpires from the testimony of witness Gitaben. On re-appreciation of evidence of Gitaben, this Court finds that her assertion that she had accompanied the deceased to matrimonial home of the deceased after marriage of the deceased with the appellant

stands firmly established. In fact, the suggestions made by the defence indicate that it is admitted by the defence that she had accompanied the deceased to her matrimonial home, but what is claimed by the defence is that she had not witnessed the incident. However, the fact she had accompanied her deceased sister to her matrimonial home immediately after the marriage, can hardly be disputed. The learned Judge of the trial Court has disbelieved this witness on the ground that certain facts were omitted to be stated by her in her police statement and some contradictions have been brought on record with reference to her earlier police statement. However, this Court finds that those omissions and/or contradictions do not go to the root of the matter, but pertain to insignificant aspects thereof. What is relevant to notice is that PSI Mr.Pathak in his evidence has stated that Gitaben has stated in her police statement that she had not gone to see as she was scared. This contradiction is neither here nor there. At what point of time, witness Gitaben had not gone to see the deceased is not brought on record. This statement itself would not indicate that she had not seen the appellant inflicting blows on the head of deceased Bhavnaben by means of wedge/chip of wood. Further, the evidence of PI Mr.Pathak shows that it was stated by Gitaben in her police statement that the deceased was

taken to the hospital and that she had not stated in her police statement that she had gone to the room occupied by deceased Bhavnaben on hearing her shouts for help. It is also evident from the evidence of PI Mr.Pathak that the witness has not stated in her police statement that she had seen the appellant inflicting blows to the deceased by means of wedge/chip of wood and that it was also not stated by her that the appellant was in the room and that deceased Bhavnaben was bleeding. However, the suggestion, which was made by the defence to this witness, that from talks with others, this witness had learnt that the appellant had caused injuries to the deceased is not proved with reference to testimony of PI Mr.Pathak. Similarly, the suggestion made by the defence that this witness had learnt that the deceased was delivered blows with wedge/chip of wood on her head and, therefore, bled profusely, is also not proved. It is well to remember that at the time of incident, this witness was hardly 15 years old. A girl of her tender age, who witnesses ghastly attack on her sister, is bound to be dumb founded and shocked. Under the circumstances, omissions are bound to occur when police statement of such a witness is recorded. The discrepancies which are found in the testimony of witness Gitaben are due to normal errors of observation, normal errors of memory due to lapse of time, due to

mental disposition, shock and horror at the time of occurrence or the like. On reading the evidence of witness Gitaben as a whole, this Court is convinced that it has a ring of truth. As observed earlier, minor omissions in the police statement are never considered to be fatal. The statements given by the witnesses before the police are meant to be brief statements and cannot take place of evidence in the Court. Therefore, small/trivial omissions would not justify a finding by a Court that the witness concerned is a liar. What is relevant to notice is that this witness is not on inimical terms with the appellant. It is not even remotely suggested by the defence that she was on inimical terms with the appellant or was bearing a grudge against the appellant and, therefore, was out to implicate the appellant falsely in such a serious case. The witness is cousin of the deceased and, therefore, would not allow the real culprit to go scot-free or involve any one falsely in such a serious case. This witness to some extent stands corroborated by evidence of witness Shanabhai examined at Exh.36. The evidence of Shanabhai indicates that he is a professional photographer and runs his 'Shrivastava Studio' on Station Road, Petlad, and that he was called by the police to take snaps of dead body of the deceased and place of incident. The witness has stated that he had taken in all 33

photographs. The photographs taken by him with negatives were produced by him at Exhs.41 to 73. A bare glance at those photographs makes it evident that the deceased was done to death in a most horrendous manner and excessive bleeding had taken place. The bleeding was so profuse that the whole floor of the room was bloodstained as if blood was spilled over the floor and even walls of the room were found heavily bloodstained. Further, bloodstained thick wedge of wood used by the appellant to thrash the deceased mercilessly is also seen in the photographs. Thus, the photographs produced on record of the case match with the manner narrated by witness Gitaben in which the deceased was assaulted by the appellant. This Court is aware of the fact that this witness is the sole eye witness, who has supported the case of the prosecution. But this is quite understandable because the incident had taken place in the town of the appellant and in the room which was quite adjoining the house of father of the appellant. The learned Judge of the trial Court has rightly held that the maternal uncle of the appellant has lied before the Court to save the appellant. The law relating to testimony tendered by the sole eye-witness is well settled. It is well settled by the Supreme Court in catena of decisions that it is quality of evidence that matters and not number of witnesses. Credible evidence of even a solitary

witness can form the basis of conviction. If plurality of witnesses would have been the legislative intent, the cases where the testimony of single witness could be available, in a number of crimes the offenders would have gone unpunished. It is the quality of the evidence of solitary witness whose testimony has to be tested on touchstone of the credibility and reliability.

12(4) The plea that four eye-witnesses to the incident have not been examined by the prosecution and, therefore, after drawing adverse inference, case of the prosecution should be disbelieved, has no merits at all. It is true that according to the prosecution, over and above witness Gitaben, the incident in question was witnessed by four other persons, namely, (1) Umangbhai; (2) Shaileshbhai; (3) Ms.Savitaben; and, (4) Manishbhai. It is worth noticing that Ms.Savitaben is mother of the appellant and Manishbhai is brother of the appellant whereas two others are residents of the society in which the appellant resides. The attempt made by the maternal uncle of the appellant to sabotage the prosecution case cannot be ignored by any one at all. A criminal trial is not like a fairy tale wherein close relatives and friends of the accused support the prosecution. It is hard reality of life that relatives and close friends of the

accused hardly land support to the prosecution wherein accused is charged with commission of serious offence. In any view of the matter, as explained by the Supreme Court in **Ramanand Yadav vs. Prabhunath Jha & Ors., A.I.R. 2004 SC 1053**, persons left out and not examined by the prosecution can always be examined by the accused as defence witnesses. The appellant also could have assisted cause of justice by examining those four eye witnesses but that is not done by him. For all these reasons, non-examination of four witnesses cannot be considered as having adverse effect on the prosecution case at all. Once the testimony of sole eye witness is found to be reliable, there is no legal impediment to convict the accused on such proof. On evaluation of the testimony tendered by witness Gitaben, this Court is of the opinion that her testimony is quite categorical, consistent and implicitly reliable. It is free from any blemish which would make her testimony unreliable. The learned Judge of the trial Court was not justified at all in disbelieving evidence tendered by witness Gitaben for the reasons stated by him in the impugned judgement. Those reasons run counter to the decision rendered by the Supreme Court on the point and, therefore, finding recorded by the learned Judge of the trial Court that witness Gitaben had not seen the incident in question is

liable to be set aside and is hereby set aside. On the facts and in the circumstances of the case, this Court is of the opinion that the case against the appellant that the appellant had murdered his wife Bhavnaben stands firmly established by the prosecution through reliable testimony of eye-witness Gitaben and, therefore, the appeal is liable to be dismissed.

13. Even if it is assumed for the sake of argument that the testimony of witness Gitaben is full of inconsistencies, discrepancies, omissions, contradictions, etc. and, therefore, it is not safe for the Court to place reliance on her testimony for the purpose of convicting the appellant under Section 302 IPC, the Court will have to consider whether circumstantial evidence on record proves the guilt of the appellant.

14. The law relating to circumstantial evidence is well settled. In dealing with circumstantial evidence, there is always a danger that conjecture or suspicion lingering on mind may take place of proof. Suspicion, however, strong cannot be allowed to take place of proof and, therefore, the Court has to be watchful and ensure that conjectures and suspicions do not take place of legal proof. However, it is no derogation of evidence to

say that it is circumstantial. Human agency may be faulty in expressing picturisation of actual incident, but the circumstances can not fail. Therefore, many a times it is aptly said that "men may tell lies, but circumstances do not". In cases where evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should, in the first instance, be fully established and all the facts so established, should be consistent only with the hypothesis of the guilt of the accused. The circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis except the one sought to be proved. There must be a chain of evidence so far complete as not to leave any reasonable ground for conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability, the act must have been done by the accused. In deciding the sufficiency of the circumstantial evidence for the purpose of conviction, Court has to consider the total cumulative effect of all the proved facts, each one of which reinforces the conclusion of guilt and if the combined effect of all these facts taken together is conclusive in establishing the guilt of the accused, the conviction would be justified even though it may

be that one or more of these facts by itself or themselves is, or are not decisive. Where a case rests squarely on circumstantial evidence, the various sets of circumstantial evidence should be taken into consideration and their total effect should be such that they must lead unerringly to the guilt of the accused. Each fact must be proved individually and only thereafter the sum total of the proved facts has to be taken into consideration, but this does not mean that before the prosecution can succeed in a case resting upon circumstantial evidence alone, it must prove each and every hypothesis suggested by the accused, howsoever, extravagant and fanciful it might be. In **Sharad v. State of Maharashtra, A.I.R. 1984 SC 1622**, after referring to earlier case law, the Supreme Court has summarized the conditions to be fulfilled in a case based on circumstantial evidence as under: (i) the circumstances from which the conclusion of guilt is to be drawn should be fully established. The circumstances concerned 'must' or 'should' and not 'may' be established, (ii) the fact so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty; (iii) the circumstances should be of conclusive

nature and tendency; (iv) they should exclude every possible hypothesis except the one to be proved; (v) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused; and (vi) where the various links in a chain are in themselves complete, then a false plea or a false defence may be called into aid only to lend assurance to the Court.

15. If the aforesaid various conditions are fulfilled, only then a Court can use a false explanation or a false defence as an additional link and not otherwise. As observed earlier, if the circumstances proved are consistent with the innocence of the accused, then the accused is entitled to the benefit of doubt. However, in applying this principle, distinction must be made between facts called primary or basic on the one hand and inference of facts to be drawn from them on the other. In regard to the proof of basic or primary facts, the Court has to judge the evidence and decide whether that evidence proves a particular fact or not and if that fact is proved, the question arises whether that fact leads to the inference of guilt of the accused person or

not. In dealing with this aspect of the problem, the doctrine of benefit of doubt applies. Although there should be no missing links in the case, yet it is not essential that every one of the links must appear on the surface of the evidence adduced and some of these links may have to be inferred from the proved facts. In drawing these inferences or presumptions, the Court must have regard to the common course of natural events, and to human conduct and their relations to the facts of the particular case.

16. In the light of aboverereferredto principles, the question will have to be determined, whether the circumstances sought to be relied upon are proved and whether they form a complete chain so as to rule out innocence of the appellant.

16(1) The fact that the marriage of deceased Bhavnaben took place with the appellant on February 16, 1996 is not in dispute. It is not in dispute that after her marriage, the deceased had gone to her in-laws' place at Petlad with the appellant. It is also not in dispute that marriage reception of the appellant and the deceased was arranged on February 16, 1996 and was attended by the relatives as well as friends of the appellant and the

deceased. The evidence of Gitaben, which is discussed earlier, in no uncertain terms establishes that in order to provide accommodation to the newly wedded couple, adjoining house, which was vacant, was made available to them and that the room in which, the incident had taken place was occupied by the appellant and the deceased. The testimony of witness Gitaben further unerringly establishes that on the day of incident, the deceased was last seen alive in the company of the appellant. Though witness Ramsinh Fulsinh, who is maternal uncle of the appellant, has deserted prosecution and disowned his own complaint, he has, in terms, in paragraph 2 of his deposition, stated that after marriage deceased Bhavnaben was brought to Petlad and that she was residing with the appellant. Normally, the evidence of a hostile witness would be of little assistance to the prosecution, but the same can be relied upon by the prosecution if corroborated by other evidence on record. The evidence of witness Gitaben establishes that the deceased was last seen alive in the company of the appellant and, therefore, the claim advanced by hostile witness Ramsinh, who is maternal uncle of the appellant, that after marriage, the deceased was residing with the appellant deserves acceptance. Thus, the evidence on record establishes that the appellant was in the company of the deceased on the

fateful day.

16(2) There is yet another circumstance which needs special mention. Reading paragraph 1 of testimony of Medical Officer Mr.Rajvadiya recorded at Exh.10, it becomes clear that after injured Bhavnaben was admitted to S.S.Hospital, Petlad, for treatment, he had conveyed necessary information on phone to Police Officer in charge of Petlad Town Police Station. From paragraphs 1 and 2 as well as paragraph 9 of testimony of PI Mr.Pathak recorded at Exh.27, it transpires clinchingly that pursuant to telephonic message received from Medical Officer of Petlad Hospital, Entry No.11 was made in Station Diary maintained at the Police Station. It further becomes evident that contents of that entry were made known to PI Mr.Pathak by wireless message. He, therefore, had gone to Police Station and verified the entry. Mr.Pathak in paragraph 9 of his deposition has, in terms, stated that on the basis of telephonic message received from Medical Officer, Petlad Hospital, it was mentioned in the entry that assailant of the injured was her husband. Thus, the incriminating circumstance namely that at the earliest point of time, name of the appellant as assailant of the deceased was disclosed stands firmly established.

16(3) In order to prove motive of the crime, the prosecution has examined Mr.C.A.Darbar, who is father of the deceased. Mr.Darbar in his testimony recorded at Exh.23 has stated that on the next day of marriage of the deceased with the appellant, a marriage reception was arranged at Petlad and, therefore, he in the company of his wife and children had gone to Petlad to attend the same. According to this witness, after marriage reception was over, he had gone to house of his brother-in-law, i.e. father of witness Gitaben and gone to the place of in-laws of his daughter at 5.00 PM. The witness has mentioned that at that time, he had found his son-in-law, i.e. the appellant, offended. The witness has stated that his daughter had thereafter come to house of her maternal uncle, i.e. father of witness Gitaben, and at that time, he had asked her as to why the appellant was displeased. The witness has mentioned that his daughter had told him that gold set as agreed upon by her in-laws was not given to her and only a gold chain was given and because she had demanded gold necklace, the appellant was offended. The witness has asserted before the Court that thereupon, he had advised his daughter Bhavnaben to behave in future in such a manner as not to give rise to any discord. According to this witness, his daughter had assured him that she would tender apology to the appellant and had,

therefore, gone to the place of her in-laws. Though this witness is cross examined at length, nothing could be brought on record to impeach his credibility. As mentioned earlier, after murder of the deceased, an agreement was executed between the parties evidencing items which were handed over back to respective parties. It is produced at Exh.26. It, *inter alia*, mentions that gold chain given by the in-laws of the deceased was given back to the in-laws of the deceased. Thus witness Mr.C.A.Darbar stands corroborated by documentary evidence on record regarding reason which was narrated by the deceased to him as to why the appellant was found offended. It is satisfactorily proved by the prosecution that demand of gold necklace by the deceased was not approved by the appellant and the appellant was, therefore, offended, which, in turn, provided motive to the appellant to commit crime in question.

16(4) One of the circumstances, which is sought to be relied upon by the prosecution, is that while in police custody, the appellant had made disclosure statements pursuant to which, his bloodstained clothes and bloodstained knife were recovered. The learned counsel of the appellant had argued that these incriminating circumstances were never explained to the appellant nor

his explanation was sought regarding those incriminating circumstances while recording his statement under Section 313 of the Code and, therefore, they should be excluded from the consideration. It is true that the circumstances not put to the accused in his examination under Section 313 of the Code must be excluded from the consideration. However, failure to draw accused's attention to inculpatory material to enable him to explain it by itself does not vitiate the proceedings and prejudice, if any, caused to the accused has to be established by him. Further, the course in such an eventuality to be adopted by the appellate court is well defined. In **Shivaji Sahabrao Bobade & Anr. vs. State of Maharashtra, (1973) 2 SCC 793**, it is ruled by the Supreme Court that:

"It is trite law, nevertheless fundamental, that the prisoner's attention should be drawn to every inculpatory material so as to enable him to explain it. This is the basic fairness of a criminal trial and failure in this area may gravely imperil the validity of the trial itself, if consequential miscarriage of justice has flowed. However, where such an omission has occurred it does not ipso facto vitiate the proceedings and prejudice occasioned by such defect must be established by the accused. In the event of evidentiary material not being put to the accused, the Court must ordinarily eschew such material from consideration. It is also open to the appellate Court to call upon the counsel for the accused to show what explanation the accused has as regards the circumstances established against him but not put to him and if the accused is unable to offer the appellate Court any plausible or reasonable explanation of

such circumstances, the Court may assume that no acceptable answer exists and that even if the accused had been questioned at the proper time in the trial Court he would not have been able to furnish any good ground to get out of the circumstances on which the trial Court had relied for its conviction. In such a case, the Court proceeds on the footing that though a grave irregularity has occurred as regards compliance with Section 342 Cr.P.C., the omission has not been shown to have caused prejudice to the accused."

It may be stated that the above dictum has been followed by the Supreme Court in other reported decisions including one rendered in **State (Delhi Administration) vs. Dharampal, (2001) 10 SCC 372.**

16(5) This Court had called upon the learned counsel of the appellant to show as to what explanation the accused has as regards the recovery of his bloodstained clothes and bloodstained knife pursuant to disclosure statements made by him as well as the report of the analysis which, in turn, indicates that the blood group found on those articles was the same as that of the deceased. The learned counsel of the appellant could not have given any explanation without the help of the appellant and, therefore, by an order dated October 11, 2005, the Superintendent, Central Jail, Baroda, was directed to keep the appellant present before the Court on October 13, 2005. Accordingly, the appellant was produced before this

Court and after consulting the appellant, explanation was sought from the learned counsel of the appellant regarding incriminating evidence against the appellant. Additional further statement of the appellant under Section 313 of the Code was also recorded. All incriminating circumstances appearing against him were explained to him. After explaining those incriminating circumstances, his explanation was sought and the explanation offered by him was noted down in his presence. It may be stated that after the explanation was noted down, the same was read over and explained to him and in token of having understood the same, it was signed by the appellant in English. Except stating that it is not true that incriminating articles were recovered pursuant to disclosure statements made by him, the appellant has not offered any explanation worth the name at all.

16(6) It is true that the panch-witnesses have not supported find of incriminating articles recovered pursuant disclosure statements made by the appellant while in custody. However, the said fact stands satisfactorily proved from the reliable testimony of PI Mr.Pathak. It is well settled that merely because the panch-witnesses do not support the case of the prosecution, the case of the prosecution need not be thrown over board as unreliable.

It must be realised that the phenomenon of panch witnesses turning hostile to the prosecution is not unknown and is ever on the increase. It needs hardly to be emphasized that the decision of a case does not depend solely on the question whether the panch witnesses support the prosecution or turn their back on it. If the decision of the case were to depend solely on the testimony of panch witnesses regardless of the evidence of independent witnesses and/or Police Officers, in theory, it would be giving a right of veto to the panchas so far as question of culpability of an accused is concerned, which would be quite contrary to well settled principles of criminal jurisprudence. If the evidence of Police Officer is otherwise found to be true and dependable, judicial pragmatism requires that merely because the panchas do not support, it should not be made a ground to discard his evidence.

16(7) Therefore, testimony of PI Mr.Pathak, which is quite clear, categorical and implicitly reliable, cannot be disbelieved merely because panch-witnesses have chosen not to support the prosecution. The testimony of PI Mr.Pathak establishes that on February 20, 1996, the appellant had made disclosure statement pursuant to which, plastic bag containing his bloodstained clothes, was

recovered from a secluded hedge near the railway track as detailed in panchnama Exh.34 and that those clothes were found to be bloodstained. Similarly find of bloodstained knife as mentioned in panchnama Exh.36 stands firmly proved by the reliable testimony of PI Mr.Pathak. The find of those incriminating articles would establish that the appellant was author of concealment of those articles.

17. The plea that the articles, which were recovered pursuant to disclosure statements made by the appellant, were not identified by PI Mr.Pathak during the course of recording his examination-in-chief and, therefore, should not be considered by the Court, is merely stated to be rejected. The last line of paragraph 7 of his testimony makes it very evident that *muddamal* articles were shown to him and were identified by him to be the same. That statement made by PI Mr.Pathak will have to be considered by the Court in the light of statements made by him in paragraphs 5 and 6 of his testimony. Therefore, it is not correct to say that incriminating articles were not identified by PI Mr.Pathak during the course of his examination-in-chief. Even otherwise, incriminating articles were recovered by PI Mr.Pathak himself in the presence of panch-witnesses and he was quite well aware about the same. Therefore even if it is assumed for the

sake of argument that there is absence of formal statement regarding identification of *muddamal* articles in the testimony of PI Mr.Pathak, that by itself would not preclude the Court from considering the effect of those incriminating articles while considering the prosecution case. The testimony of PI Mr.Pathak further establishes that incriminating articles were sent to F.S.L. for analysis. The report of the analysis is produced by the prosecution at Exh.82. It indicates that bracier, saree, etc. worn by the deceased were stained with blood having 'O' group whereas bushirt, pant, handle of knife, blade of knife, etc. were also found to be stained with blood having 'O' group. It may be stated that the appellant was never found to have sustained bleeding injuries and, therefore, though his blood group is also 'O' that by itself would not indicate that his clothes and/or knife were stained with his own blood. The find of the same group of blood as that of the deceased on the clothes of the appellant and the knife recovered pursuant to disclosure statement made by the appellant would indicate that the appellant was in close proximity of the deceased when the deceased was fatally wounded. Further, the injuries, i.e. bruises, suffered by the appellant, would also indicate that they could have been sustained while causing injuries to the deceased by means of wedge/chip of

wood.

17(1) The circumstance that the appellant was absconding for two days also will have to be considered by the Court. The evidence on record including that of the maternal uncle of the appellant makes it very evident that the appellant was absconding for two days, and had surrendered to the police on his own. If the appellant had not assaulted the deceased, he would have been found by the side of his injured wife and would have removed her to hospital for treatment, but there was no reason to abscond at all. This circumstance taken in the light of other circumstances also makes the case of the prosecution acceptable that the appellant had murdered his wife.

18. The review of the evidence on record makes it evident that following circumstances stand firmly established:

- (1) The marriage of the deceased took place with the appellant on February 16, 1996 whereas the reception was arranged on February 17, 1996 at Petlad and the incident of murder of the deceased took place on February 18, 1996;

- (2) The deceased died a homicidal death in Bungalow No.51 of Bhagyalaxmi Society, Petlad, which is adjoining the house of the appellant;
- (3) The appellant was in the company of the deceased when the deceased was murdered;
- (4) At the first available opportunity, the name of the appellant as assailant of the deceased was disclosed at Petlad Town Police Station;
- (5) Motive of the crime was demand of gold set by the deceased which was agreed to be given to her by her in-laws;
- (6) Incriminating articles such as clothes of the appellant and the knife used in commission of crime were discovered pursuant to disclosure statements made by the appellant and the same group of blood as that of the deceased was found on those articles, which established that the appellant was in close proximity of the deceased when the deceased was fatally wounded;
- (7) The appellant was neither available at his house

nor at the hospital and was absconding for two days.

19. The circumstances proved are of conclusive nature and tendency, and they are such as to exclude every hypothesis but, the one proposed to be proved against the appellant. The chain of circumstances is complete and does not afford any reasonable ground for a conclusion consistent with the innocence of the appellant. On consideration of total cumulative effect of all the proved facts, this Court is satisfied that in all human probability, the act of causing death of deceased Bhavnaben must have been done by the appellant and the appellant alone. This Court notices that the Supreme Court in (1) **Vasa Chandra Shekhar Rao vs. Poona Satya Narayana (2000) 6 SCC 286**, and (2) **Geetha vs. State of Karnataka, (2000) 10 SCC 72**, while explaining the law relating to circumstantial evidence has ruled that where circumstances proved are put to the accused through his examination under Section 313 of the Code and the accused merely denies the same then such denial would be an additional link in the chain of circumstances to bring home the charge against the accused. Here in this case, the incriminating circumstances proved were put to the appellant and in his further statement recorded under

Section 313 of the Code, he has merely denied the same. Therefore, such denial will have to be treated as an additional link in the chain of circumstances to bring home the charge against the appellant. There is no manner of doubt that in all human probability, the act of murder of the deceased must have been done by the appellant.

20. The net result of the above discussion is that the reliable testimony of witness Gitaben examined at Exh.24 and, in the alternative, circumstantial evidence adduced by the prosecution proves that the appellant had murdered his wife. The appeal, therefore, which lacks merits will have to be dismissed.

For the foregoing reasons, the appeal fails and is dismissed. *Muddamal* to be disposed of in terms of directions given by the learned Judge of the trial Court in the impugned judgement.

[J.M.PANCHAL, J.]

[H.B.ANTANI, J.]

Rajendra